

REMARKS

Claims 7-25 are in the instant application. Claims 9-12 are cancelled without prejudice to eliminate issues; claims 7, 8 and 13 are amended to more positively set forth Applicants' patentably novel eye drop container, and claims 26-28 are added to set forth Applicants' patentably novel eye drop container in varying scope. Claims 15, 16, 21 and 22 cancelled by the Amendment filed January 8, 2010, which Amendment was not entered, are presented for consideration herein.

Support for the amendments to claims 7, 8 and 13 is found, among other places, in the pending claims, Figs. 1 and 2 and paragraph [0024] of U.S. Publication No. US 2007/0145076 (published subject application). Based on the foregoing, Applicants respectfully request admittance of the amendments to, and consideration of, claims 7, 8 and 13.

Claims 7, 8, 13, 14, 17-20 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petterson U.S. Patent No. 4,002,168 (hereinafter also referred to as "Petterson") in view of Hamamoto U.S. Publication No. 2002/0190079 (hereinafter also referred to as "Hamamoto"). Applicants respectfully traverse the rejection of claims 7, 8, 13, 14, 17-20 and 23-25 under 35 U.S.C. 103(a) as being unpatentable over Petterson in view of Hamamoto and request reconsideration thereof. Claims 7, 8, 13, 14, 17, 18 and 23 are further rejected under 35 U.S.C. 103(a) as being unpatentable over Hamamoto in view of Petterson. Applicants respectfully traverse the rejection of claims 7, 8, 13, 14, 17, 18 and 23 under 35 U.S.C. 103(a) as being unpatentable over Hamamoto in view of Petterson and request reconsideration thereof.

Claim 7 is an independent claim having claims 8, 13, 14, 17-20 and 23-25 dependent, either directly or indirectly, thereon. Claim 7 is amended to set forth, among other things, an aerating device provided at the bottom of the container body. The aerating device is allowed to contact a floor surface when the cap is removed. Since the aerating device is provided at the bottom of the container body, the center of gravity of the container is shifted toward the bottom of the container body by the weight of the aerating device, which increases the stability of the container compared with the conventional arrangement of the aerating device provided adjacent to the instilling opening. As a result, the container falls less easily or less often when vibrations occur, for example, which provides the arrangement suitable for storage

(see paragraph [0024] of U.S. Publication No. US 2007/0145076 (published subject application)). Applicants respectfully submit that the combination of Petterson and Hamamoto, and Hamamoto and Petterson suggest that such unique and specific effects would be achieved.

Claim 7 further recites that the aerating device provided at the bottom of the container body has a filter element and a check valve for allowing ambient air to flow in from the outside and to prevent the liquid from flowing out. More particularly, claim 7 positively recites that a check valve allows ambient air to flow in from the outside and prevents the liquid from flowing out. The Office Action dated October 8, 2009 in paragraph 2 states that Petterson does not disclose an aerating device located at the bottom of the container and alleges that Hamamoto discloses that an aerating device can be located either at the top, on the side or on the bottom of the container as desired. Applicants respectfully submit that one skilled in the art has the options of Hamamoto to position an aerating device at the bottom of a container if the liquid is contained in the layers 22 disclosed by Hamamoto. There are no disclosures in the prior art that the options of Hamamoto are available with the aerating device of Petterson.

Even if one skilled in the art was to place the aerating device of Hamamoto at the bottom of the container of Petterson, or the aerating device of Petterson at the bottom of the container of Hamamoto, all the features of claim 7 would not be disclosed. More particularly, claim 7 further recites that the aerating device is allowed to contact the floor when the bottom cap is removed. This feature of claim 7 is further detailed in new claim 28 (which includes spacing the filter and check valve from the floor surface). There is no disclosure of the aerating device of Petterson, or in Hamamoto that teaches one skilled in the art that the aerating device of Petterson can be placed at the bottom of the container and can be allowed to contact the floor surface.

Claim 7 still further sets forth that the bottom cap is provided for covering the aerating device. This arrangement prevents variations in pressure in the outside from being applied directly to the aerating device when the bottom cap is attached. Further, since occurrence of the pressure difference between the inside and the outside of the container can be avoided, it is prevented that the pressure increase at a time other than a time of instillation is released to cause the liquid contained in the liquid storage portion to be ejected forceably (see

paragraphs [0028] and [0029] U.S. Publication No. US 2007/0145076 (published subject application)).

Petterson and Hamamoto do not disclose the arrangement in which the aerating device is covered with a bottom cap. WO 02/38464 A1, an applied prior art reference discussed in more detail below only discloses that the air valves 130 and 132 are formed directly in the screw caps 28 and 30 and fails to disclose the arrangement of the aerating device covered with the bottom cap as in the present invention.

As noted above, Petterson and Hamamoto, and Hamamoto and Petterson do not disclose or suggest the arrangement and effects of the eye drop container recited in claim 7.

Based on the foregoing, Applicants respectfully request withdrawal of the rejection of claims 7, 8, 13, 14, 17-20 and 23-25 under 35 U.S.C. 103(a) as being unpatentable over Petterson in view of Hamamoto, and withdrawal of the rejection of claims 7, 8, 13, 14, 17, 18 and 23 under 35 U.S.C. 103(a) as being unpatentable over Hamamoto in view of Petterson.

Claims 7, 8, 13, 14, 17-20, and 23-25 are rejected under 35 U.S.C. 103(a) for being unpatentable over Petterson in view of Fu U.S. Patent No. 5,186,559 (hereinafter also referred to as "Fu"). Applicants respectfully traverse the rejection of Claims 7, 8, 13, 14, 17-20, and 23-25 under 35 U.S.C. 103(a) for being unpatentable over Petterson in view of Fu and request reconsideration thereof. Claims 8, 13, 14, 17-20 and 23-25 depend from claim 7, either directly or indirectly. Claim 7 and Petterson were discussed above.

The disclosure of Petterson is directed to a dispenser (10) suitable for storing and dispensing an ophthalmic product, and Fu is directed to a cooking sauce dispenser. The dispenser of Fu is maintained in a position such that the aerating device is at the top of the container when the food dispensers are not in use and when the dispensers are in use. Petterson's dispenser, on the other hand, has the aerating device on the bottom of the container when the dispenser is dispensing liquid, and has the aerating device at the top of the container when the dispenser is storing the liquid. Applicants respectfully submit that one skilled in the art viewing the Petterson dispenser and the Fu dispenser would not be taught Applicants' dispenser recited in claim 7 that includes, among other things, an aerating device at the bottom of the container, and the aerating device being allowed to contact the floor when the bottom cap is removed.

Based on the foregoing, Applicants respectfully request withdrawal of the rejection of Claims 7, 8, 13, 14, 17-20, and 23-25 under 35 U.S.C. 103(a) for being unpatentable over Petterson in view of Fu.

Claims 15, 16, 21, and 22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hamamoto in view of Petterson, as applied to claims 7 and 8 and further in view of International Patent Application Publication No. WO 02/38464 to Faurie et al. (hereinafter also referred to as "Faurie"). Applicants respectfully traverse the rejection of claims 15, 16, 21 and 22 under 35 U.S.C. 103(a) as being unpatentable over the Hamamoto in view of Petterson as applied to claims 7 and 8, and further in view of Faurie and request reconsideration thereof.

Claims 15, 16, 21 and 22 depend from claim 7, either directly or indirectly. Claims 7 and 8, and Petterson and Hamamoto were discussed above. In that discussion Applicants discussed the features of claim 7 that patentably distinguish Applicants' claim 7 over Petterson and Hamamoto. That discussion, among others, is applicable to patentably distinguish claims 15, 16, 21 and 22 over Petterson, Hamamoto and Faurie.

Based on the foregoing, Applicants respectfully request withdrawal of the rejection of claim 15, 16, 21 and 22 under 35 U.S.C. 103(a) as being unpatentable over Hamamoto in view of Petterson as applied to claims 7 and 8, and further in view Faurie and request allowance of claims 7, 8, and 13-28.

Claims 26-28 are added by this Amendment. Claims 26 and 28 depend from claim 7, and claim 27 depends from claim 26. Support for claims 26-28 is found, among other places, in the pending claims, Figs. 1 and 2, and [0031] to [0033] of U.S. Publication No. US 2007/0145076 (published subject application). The arguments put forth to patentably distinguish claim 7 over the art are applicable, among others, to patentably distinguish claims 26-28 over similar art.

The features of claim 28 were discussed above. Further, regarding claims 26 and 27, claim 26 recites the bottom cap is formed integrally with the container body, and claim 27 recites the bottom cap formed integrally with the container body is separable from the container body. With this arrangement, the bottom cap can be made of parison which is the same material

Application No. 10/584,656
Paper Dated: February 8, 2010
In Reply to USPTO Correspondence of October 8, 2009
Attorney Docket No. 0388-061892

as the container body such that in forming the liquid storage container by blow molding or vacuum forming techniques, for example, the container and cap can be readily manufactured. Further the aerating device is not easily exposed prior to use unless a person, e.g., the user, deliberately cuts off and removes the bottom cap. As a result there hardly remains a chance for the bottom cap to be inadvertently removed during transportation. Thus the aerating device can be protected satisfactorily before use of the liquid storage container (see paragraphs [0031] to [0033] of U.S. Publication No. US 2007/0145076 (published subject application)).

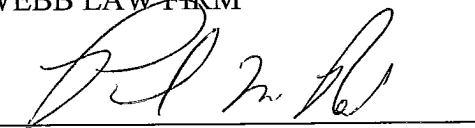
Based on the foregoing, Applicants respectfully request admittance of, consideration of, and allowance of, claims 26-28

This Amendment represents a sincere effort to place this application in condition for allowance. In the event issues remain, the Examiner is invited to contact the Applicants' undersigned representative by telephone.

Respectfully submitted,

THE WEBB LAW FIRM

By



Paul M. Reznick
Registration No. 33,059
Attorney for Applicants
436 Seventh Avenue
700 Koppers Building
Pittsburgh, PA 15219
Telephone: (412) 471-8815
Facsimile: (412) 471-4094
E-mail: webblaw@webblaw.com